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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,085	02/20/2004	Kenneth David Harris JR.	033964-1060	6251

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EXAMINER
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MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,085	<b>Applicant(s)</b> HARRIS ET AL.	
	<b>Examiner</b> Tara L. Mayo	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/14/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1 through 4, 6, 8 through 10, 12, 15 through 19, 21, 23 through 25, 27, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365 A).

Cassini '174, as seen in Figures 1 through 8, shows a bed cushion for supporting a person in a sitting position comprising:  
with regard to claims 1, 16 and 31,

Art Unit: 3671

a backrest with two side edges (2); and

two elongate armrests (7, 8), each with a longitudinal axis, rotatably coupled (i.e., capable of being rotated via snaps; col. 2, lines 25 through 45) to the backrest, wherein the two armrests can rotate from a sitting position to a folded position along the two side edges of the backrest;

with regard to claims 2 and 17,

wherein the two armrests are perpendicular to the backrest in the sitting position;

with regard to claims 3 and 18,

wherein the two armrests rotate from zero to one hundred and eighty degrees from the backrest; and

with regard to claims 6 and 21,

wherein the backrest and two armrests form nearly a rectangular top profile in the folded position.

Cassini '174 teaches all of the features of the claimed invention with the exception(s) of:

with regard to claims 1, 16 and 31,

one or more massaging units within the backrest;

the two armrests capable of rotating while remaining coupled to the backrest;

with regard to claims 4 and 19,

the sitting position being formed by rotating the two armrests from about forty-five to about one hundred and thirty-five degrees from the backrest;

with regard to claims 8 and 23,

Art Unit: 3671

the one or more massaging units being pulsating transducers;  
with regard to claims 9 and 24,  
a control panel coupled by electrical communication to the one or more massaging units;  
with regard to claims 10 and 25,  
the control panel being located in one of the two armrests;  
with regard to claims 12 and 27,  
a power supply coupled by electrical communication to a control panel;  
with regard to claims 15 and 30,  
the two armrests being coupled to the backrest by an axle that runs through a bottom portion of the backrest.

Tomlinson '365, as seen in Figures 1 and 3, shows a massaging bed cushion comprising a backrest (12) and right and left armrests (24, 28) detachably and rotatably coupled (via axle 38 and member 40; col. 4, lines 34 through 40) to the backrest for ease of positioning oneself, and further comprising one or more massaging units (20) within the backrest in the form of pulsating transducers (col. 4, lines 14 through 15), the massaging units being in electrical communication with a control panel (32) located in one of the armrests, and further comprising a power supply in electrical communication with the control panel (col. 4, lines 15 through 17 and 28 through 30).

With regard to claims 1, 8 through 10, 12, 16, 23 through 25, 27 and 31, it would have been obvious to one having ordinary skill in the art body supports at the time the invention was made to modify the device shown by Cassini '174 such that it would include the vibratory

Art Unit: 3671

system disclosed by Tomlinson '365. The motivation would have been to enhance the comfort of a user by imparting massaging action.

With specific regard to claims 1, 15, 16, 30 and 31, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a detachable, rotatable coupler as taught by Tomlinson '365 for the attachment means shown by Cassini '174. The motivation would have been for ease of positioning of the armrests during use. With further regard to claims 1 and 16, the device of the prior art combination meets the claimed limitation of the longitudinal axes of the armrests extending along the two side edges of the backrest when in the folded position. With further regard to claim 31, the device of the prior art combination meets the claimed limitation of the rotational axes extending transversely from the side edges of the back support.

With regard to claims 4 and 19, Cassini '174 shows the armrest in a sitting position at about ninety degrees from the backrest; therefore, the claimed limitation of rotating the armrest from about forty-five degrees to about one hundred and thirty-five degrees is anticipated by the prior art reference.

4. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365 A) as applied to claims 1 and 16 above, and further in view of Herpel et al. (U.S. Patent No. 3,542,427).

Cassini '174 as modified by Tomlinson '365 teaches all of the features of the claimed invention with the exception(s) of:

with regard to claims 5 and 20,

Art Unit: 3671

one or more latches to prevent the armrests from rotating about the backrest beyond the sitting position.

Herpel et al. '427, as seen in Figures 1 and 2, disclose a vehicle seat assembly with movable right and left armrests (26, 28) for accommodating desired passenger access and egress, wherein the armrests are coupled to the back portion (14) by an axle (56) running through a bottom portion of the backrest, and further comprising one or more latches (formed by the combination of elements 48 and 68) that prevent the armrests from rotating about the back rest beyond a sitting position.

With regard to claims 5 and 20, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the device taught by the combination of Cassini '174 and Tomlinson '365 such that it would further include one or more latches as taught by Herpel et al. '427. The motivation would have been to control the rotation of the armrests.

5. Claims 1, 7, 11 through 13, 15, 16, 22, 26 through 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365) and Sleichter, III et al. (U.S. Patent No. 6,682,494 B1).

Cassini '174, as seen in Figures 1 through 8, shows a bed cushion for supporting a person in a sitting position comprising:

with regard to claims 1, 16 and 31,

Art Unit: 3671

a backrest with two side edges (2); and  
two elongate armrests (7, 8), each with a longitudinal axis, rotatably coupled (via snaps; col. 2, lines 25 through 45) to the backrest, wherein the two armrests can rotate from a sitting position to a folded position along the two side edges of the backrest.

Cassini '174 fail to teach:  
with regard to claims 1, 16 and 31,  
the two armrests capable of rotating while remaining coupled to the backrest; and  
one or more massaging units within the backrest;  
with regard to claims 7 and 22,  
the one or more massaging units being massaging motors;  
with regard to claims 11 and 26,  
a control panel and one or more heating sources in the backrest and electrically coupled to and controlled by the control panel;  
with regard to claims 12 and 27,  
a power supply coupled by electrical communication to a control panel;  
with regard to claims 13 and 28,  
the power supply being a battery; and  
with regard to claims 15 and 30,  
the two armrests being coupled to the backrest by an axle that runs through a bottom portion of the backrest.



Art Unit: 3671

Tomlinson '365, as seen in Figures 1 and 3, shows a massaging bed cushion comprising a backrest (12) and right and left armrests (24, 28) detachably and rotatably coupled (via elements 38 and 40; col. 4, lines 34 through 40) to the backrest for ease of positioning oneself, and further comprising one or more massaging units (20) within the backrest in the form of pulsating transducers (col. 4, lines 14 through 15), the massaging units being in electrical communication with a control panel (32) located in one of the armrests, and further comprising a power supply in electrical communication with the control panel (col. 4, lines 15 through 17 and 28 through 30).

Sleichter, III et al. '494, as seen in Figure 1, shows a seat (15) including a seat cushion (14A) and a separate backrest (14B), the backrest comprising multiple massaging units (12) in the form of pulsating transducers (Claim 31) or motors (Claim 1), and further including a control panel (36), one or more heating sources (16), and a power supply in the form of a battery (col. 8, lines 11 through 15).

With specific regard to claims 1, 15, 16, 30 and 31, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a detachable, rotatable coupler as taught by Tomlinson '365 for the attachment means shown by Cassini '174. The motivation would have been for ease of positioning of the armrests during use. With further regard to claims 1 and 16, the device of the prior art combination meets the claimed limitation of the longitudinal axes of the armrests extending along the two side edges of the backrest when in the folded position. With further regard to claim 31, the device of the prior art combination meets the claimed limitation of the rotational axes extending transversely from the side edges of the back support.

Art Unit: 3671

With regard to claims 1, 7, 11 through 13, 16, 22, 26 through 28 and 31, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the device shown by Cassini '174 such that it would include the vibratory and heating system disclosed by Sleichter, III et al. '494. The motivation would have been to enhance the comfort of the user.

6. Claims 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365 A) as applied to claim 1 above, and further in view of Swezey et al. (U.S. Patent No. 5,423,098).

Cassini '174 further teaches:  
with regard to claim 14,

the backrest comprising a rectangular cushion and a fabric (col. 1, lines 60 through 69; and col. 2, lines 18 through 22).

The combination of Cassini '174 and Tomlinson '365 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 14 and 29,

the backrest comprising a rectangular frame.

Swezey et al. '098, as seen in Figures 1 through 4, show a bed lounge (10) including a backrest (20), the backrest comprising a rectangular frame (22A) covered by a rectangular cushion (Claim 1, line 8) and a fabric (12; Claim 1, lines 9 through 10).

With regard to claims 14 and 29, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by the combination of Cassini '174 and Tomlinson '365 such that it would further include a frame as taught by Swezey et al. '098 to provide strength to device while keeping it relatively lightweight.

### *Response to Arguments*

7. Applicant's arguments filed 14 March 2006 have been fully considered but they are not persuasive.

In response to Applicant's argument that the combination of Cassini '174 and Tomlinson '365 fails to teach armrests rotatably coupled to the backrest such that the armrests may be placed in a folded position along the side edges of the backrest, the Examiner contends that substitution of the rotatable coupler on the device shown by Tomlinson '365 for the snaps of the device shown by Cassini '174 yields the claimed invention. Specifically, a person having ordinary skill in the art would place the rotatable coupler on the side of the backrest portion in place of the snaps.

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3671

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



tlm  
25 May 2006



Thomas B. Will  
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